

International Association of Machinists and Aerospace Workers, District Lodge No. 160 (American National Can Company) and International Association of Machinists and Aerospace Workers, Local Lodge No. 79 (American National Can Company) and Keith Zurn and Marjorie Zurn.
Case 19-CB-7970

September 30, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN
AND HURTGEN

Upon a charge and an amended charge filed by Keith Zurn and Marjorie Zurn on, respectively, September 9 and September 30, 1996, the General Counsel of the National Labor Relations Board issued a complaint on April 30, 1997, against the Respondents, International Association of Machinists and Aerospace Workers, District Lodge No. 160 (District 160) and Local Lodge No. 79 (Local 79), alleging that the Respondents have engaged in certain unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the National Labor Relations Act. A copy of the complaint and notice of hearing was served on each of the Respondents. The Respondents filed a timely answer and amended answer denying the commission of any unfair labor practices.

On October 24, 1997, the Charging Parties, the Respondents, and the General Counsel filed a stipulation of facts and a motion to transfer proceeding to the Board. They agreed that the charges, complaint, answers, and the stipulation of facts constitute the entire record in this case, and that no oral testimony is necessary or desired by any of the parties. The parties waived a hearing, the making of findings of fact, conclusions of law, and the issuance of a decision by an administrative law judge. On January 21, 1998, the Executive Secretary, by direction of the Board, issued an order approving the stipulation, and transferring the proceeding to the Board. Thereafter, the General Counsel and the Charging Parties filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in the case, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Employer, American National Can Company, a corporation, with a place of business in Kent, Washington, is engaged in the business of manufacturing aluminum beverage containers. The Employer, in the 12 months prior to the issuance of the complaint and in the course and conduct of its business operations, had gross sales of goods and services valued in excess of \$500,000.

The Employer, in this same period, sold and shipped goods or provided services from its facilities within the State of Washington to customers located outside the State of Washington, or sold and shipped goods or provided services to customers within Washington State, which customers were themselves engaged in interstate commerce by other than indirect means, of a total value in excess of \$50,000. The Employer, during this same time period in the course of its business, purchased and caused to be transferred and delivered to its facilities within the State of Washington goods and materials valued in excess of \$50,000 directly from sources outside Washington, or from suppliers within Washington, which in turn obtained such goods and materials directly from sources outside Washington. We find that American National Can Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We further find that the Respondents are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The issues presented in this proceeding are whether the Respondents violated Section 8(b)(1)(A) of the Act by: (1) maintaining and applying to newly resigned employees a 1-month window period for the invocation of their rights under *Communications Workers v. Beck*, 487 U.S. 735 (1988); and (2) maintaining and applying that portion of their *Beck* procedure which provides that dues reductions will not become effective, for unit members who file *Beck* objections during the 1-month October window period, until the following January 1.

A. Facts

The Respondent Local 79, affiliated with the International Association of Machinists and Aerospace Workers (IAM), is the collective-bargaining representative of a unit of employees of the Employer. Since at least April 1, 1993, Local 79 and the Employer have maintained and enforced collective-bargaining agreements that included, inter alia, a union-security provision.

Since at least July 1, 1996, the Respondents and the IAM have maintained a procedure (*Beck* procedure) governing the reduction in fees and dues for nonmember employees covered by a union-security provision who object under *Communications Workers v. Beck* to the payment of dues and fees for nonrepresentational activities. Since 1989, the IAM has published the complete *Beck* procedure in its magazine, the *IAM Journal*, once each year. In 1995 and 1996, a copy of the *IAM Journal* was mailed to the residence of each bargaining unit employee. The parties have stipulated that in establishing the *Beck* procedure and publishing the annual notice in the *IAM Journal*, the IAM acts as the agent of its affiliated local and district lodges, including the Respondents Local 79 and District 160. The parties have further stipulated that the Respondents and/or the IAM expend

the moneys collected from its members, and from non-member employees who have not met the requirements of the *Beck* procedure, on both representational and non-representational activities.

The *Beck* procedure contains the following window period requirement:

Beginning on October 1, 1996, and ending on October 31, 1996, or during the first 30 days in which an objector is required to pay fees to the union, that objector may request that his/her monthly agency fee payment be reduced so that he/she is only bearing the costs of representational activities.

The *Beck* procedure further provides that the reductions will not become effective or apply to objectors' fees and dues until January 1, 1997.

The parties have stipulated that, for unit members who resigned their union membership and registered a *Beck* objection during the October 1–31, 1996 window period, the amount of fees required pursuant to the union-security provision was reduced effective with the payments due after January 1, 1997. In July 1996, however, 19 unit employees advised the Respondents in writing of their desire to resign union membership, to become "protected by financial core status" as defined in *Beck*, to have any dues owed to them returned, and to be charged reduced fees pursuant to *Beck*. In response, the Respondents notified the 19 individuals in writing that their resignations had been accepted, and provided them with information regarding their *Beck* rights. The parties have stipulated that the Respondents did not recognize the *Beck* objections of the 19 individuals who resigned and objected in July 1996, because those objections were made outside the October window period. The parties have further stipulated that the Respondents did not grant fee reductions to the 19 individuals, and that they were obligated under the union-security provision to continue paying full dues and fees until such time as they filed for objector status during the October window period.

B. Contentions of the Parties¹

1. The General Counsel

The General Counsel argues that the Board in *California Saw & Knife Works*² held unlawful the requirement that *Beck* objections be filed during a window period, as applied to employees who resign their union membership after the expiration of the window period. The General Counsel asserts that the Respondents here have applied a window period substantially similar to the window period found unlawful in *California Saw & Knife Works*. The General Counsel further contends that the Respondents have failed to show evidence establishing that the

window period is an administrative necessity, without which the Respondents' *Beck* system would prove to be unduly burdensome or costly.

2. The Charging Parties

The Charging Parties likewise argue that the Board's holding in *California Saw & Knife Works* is dispositive of the complaint allegation that the Respondents' window period is unlawful, because it fails to grant employees who resign their union membership a separate window period following resignation in which to file *Beck* objections. They further argue that once a unit employee resigns his or her union membership and registers a *Beck* objection, the union must immediately charge the objector reduced fees. The Charging Parties assert that to do so does not pose an administrative burden on the Respondents or the IAM.

C. Discussion

The Supreme Court held in *Communications Workers v. Beck* that the National Labor Relations Act does not permit a collective-bargaining representative, over the objection of dues-paying nonmember employees, to expend funds collected from them under a union-security agreement on activities unrelated to collective-bargaining, contract administration, or grievance adjustment.³ In *California Saw & Knife Works*, supra, the Board addressed a union's obligations under *Beck* pursuant to the well-established duty of fair representation owed to all bargaining unit members. The Board held, inter alia, that the requirement that *Beck* objections be filed during a window period, solely as applied to bargaining unit members who resign their union membership following the expiration of the window period, effectively operates as an arbitrary restriction on the right to resign from union membership. The Board explained:

A unit employee may exercise *Beck* rights only when he or she is not a member of the union. An employee who resigns union membership outside the window period is thereafter effectively compelled to continue to pay full dues even though no longer a union member, and the window period in this circumstance operates as an arbitrary restriction on the right to refrain from union membership and from supporting nonrepresentational expenditures. In light of our duty to uphold the fundamental labor policy of 'voluntary unionism' emphasized by the Court in *Pattern Makers* [473 U.S. 95, 107 (1985)], we agree with the judge that the January window period, as applied solely to employees who resign their union membership after the expiration of the window period, constitutes arbitrary conduct violative of the [union's] duty of fair representation.

¹ The Respondents did not file a brief.

² 320 NLRB 224 (1995), enf'd. sub nom. *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 525 U.S. 813 (1998).

³ 487 U.S. at 752–754.

A Board majority has recently reaffirmed the holding in *California Saw & Knife Works* that a union violates its duty of fair representation by failing—as in this case—to grant employees who resign their union membership a separate window period following resignation in which to file a *Beck* objection. See *Polymark Corp.*, 329 NLRB No. 7 (1999); *Steelworkers Local 4800 (George E. Failing Co.)*, 329 NLRB No. 18 (1999). We accordingly find unlawful the requirement set forth in the Respondents' *Beck* procedure that objections be filed during a 1-month window period, *solely* with respect to the failure to grant employees who resign their union membership a separate window period following resignation in which to file a *Beck* objection.

For those unit members who file *Beck* objections during the 1-month October window period, the Respondent's *Beck* procedure provides that their dues reduction will not become effective until the following January 1. The Supreme Court has considered whether a union may permissibly apply a fee objector provision under which the union collects the full amount of dues from objectors, and subsequently pays a rebate to the objectors. The Court held that such a "charge and rebate" system was not permissible, because it amounted to a forced loan from the objecting employees to the union.⁴ Thus, once a union "knows that a certain number of employees are fee objectors . . . then it has no right to collect moneys from those employees notwithstanding their objections, and rebate the sums" at a subsequent time. *Nielsen v. Machinists Local 2569*, 94 F.3d 1107, 1116 (7th Cir. 1996), cert. denied 520 U.S. 1165 (1997). There is no dispute in this proceeding that the Respondents know the number of employees who file *Beck* objections during the October window period. The Respondents nevertheless continue to charge full dues to those objectors for at least 2 months following the filing of their *Beck* objections. Moreover, the record is devoid of evidence that the Respondents ever refund to objectors charged amounts attributable to nonrepresentational expenses for that period. On the record before us, the Respondents advance no reason for the delay in making reductions effective. We accordingly find that the Respondents violated their duty of fair representation by requiring unit members who register their objections during the October window period to wait until January to receive the reduction in their dues.⁵

CONCLUSIONS OF LAW

1. American National Can Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

⁴ *Ellis v. Railway Clerks*, 466 U.S. 435, 443–444 (1984).

⁵ *Teamsters Local 435 (Mercury Warehouse)*, 327 NLRB 458 (1999) (respondent violated Sec. 8(b)(1)(A) by continuing to charge employees for nonrepresentational activities after they filed a *Beck* objection).

2. Respondents International Association of Machinists and Aerospace Workers, District Lodge No. 160, and International Association of Machinists and Aerospace Workers, Local Lodge No. 79, are labor organizations within the meaning of Section 2(5) of the Act.

3. By maintaining and applying that portion of their *Beck* procedure which prevents unit employees who have resigned from the Union from filing *Beck* objections within a reasonable time after their resignation, and by maintaining and applying that portion of their *Beck* procedure which provides that dues reductions will not become effective, for unit members who file *Beck* objections during the 1-month October window period, until the following January 1, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondents to amend their *Beck* procedure to clarify that: (1) bargaining unit employees who have resigned from the Union may file objections to the collection of fees for nonrepresentational expenses at any time, or, at the option of the Union, within a reasonable period specifically designated in the *Beck* procedure and not to be less than 30 days, after the resignation is submitted; and (2) dues reductions will become effective upon receipt of *Beck* objections from unit employees. We shall further order the Respondents to recognize as objecting nonmembers as of the effective date of their resignations, the unit employees who resigned their union membership and filed *Beck* objections in July 1996, and to accept from those employees the reduced dues and fees for the period since they registered their *Beck* objections. We shall additionally order the Respondents to refund all fees collected for nonrepresentational expenditures from employees for the periods they should have been perfected *Beck* objectors, with interest computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondents, International Association of Machinists and Aerospace Workers, District Lodge No. 160, and International Association of Machinists and Aerospace Workers, Local Lodge No. 79, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Preventing employees in the American National Can Company bargaining unit who have resigned from the Union from filing objections to the payment of fees for expenditures of the Union not germane to the collec-

tive-bargaining process within a reasonable time after their resignations.

(b) Collecting or attempting to collect fees from objecting nonmembers which are attributable to nonrepresentational expenses.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Amend their *Beck* policy to clarify that: (i) bargaining unit members who have resigned from the Union may file objections to the collection of fees for nonrepresentational expenses at any time, or, at the option of the Union, within a reasonable period specifically designated in the *Beck* procedure and not to be less than 30 days, after the resignation is submitted; and (ii) dues reductions will become effective upon receipt of *Beck* objections from unit employees.

(b) Recognize as objecting nonmembers as of the effective date of their resignations, the unit employees who resigned their union membership and filed *Beck* objections in July 1996, and accept from those employees reduced dues and fees for the period since they registered their *Beck* objections.

(c) Refund, with interest, fees collected for nonrepresentational expenditures from employees for the periods they should have been perfected objectors.

(d) Within 14 days after service by the Region, post at its business offices and meeting halls copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 19, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Sign and return to the Regional Director copies of the notice for posting by the Employer, if willing, on its premises where notices to employees are customarily posted.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondents have taken to comply.

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

MEMBER LIEBMAN, dissenting in part.

I find, contrary to the majority, that the requirement set forth in the Respondents' *Beck*¹ procedure that *Beck* objections be filed during a window period does not unreasonably restrict the right of employees to file *Beck* objections, and in no sense impairs their right to resign union membership. *Steelworkers Local 4800 (George E. Failing Co.)*, 329 NLRB No. 18 (1999) (Member Liebman, dissenting); *Polymark Corp.*, 329 NLRB No. 7 (1999) (Members Fox and Liebman, dissenting). The Respondents allow members to resign union membership at any time. Indeed, the parties have stipulated that the Respondents promptly accepted the July 1996 resignations of the unit employees at issue in this proceeding. "The fact that an employee may have to wait some period of time after resigning from the union to obtain a reduction in the fees [he or she] is charged as a nonmember may make resignation less *attractive* to the employee at that particular time, but that hardly means that the employee is in any sense being compelled to remain a member of the union against [his or her] will." *Polymark*, slip op. at 5. (Emphasis in original.)

Further, any assessment of the validity of a window period requirement must take into account unions' legitimate interests in administrative efficiency and simplicity. The courts have considered such interests and held that a union's use of a window period in circumstances similar to those presented here does not violate its duty of fair representation. See, e.g., *Abrams v. Communications Workers*, 59 F.3d 1373, 1381-1382 (D.C. Cir. 1995); *Nielsen v. Machinists Local 2569*, 94 F.3d 1107, 1116 (7th Cir. 1996), cert. denied 520 U.S. 1165 (1997). The Seventh Circuit Court of Appeals in *Nielsen v. Machinists* thus agreed with the union in that case that the use of a window period was a "reasonable administrative device that helps the union to process its dues objector claims and to keep its annual budget straight." *Id.* at 1116. "Nothing in the NLRA or in *Beck* confers a right to instantaneous action, regardless of the administrative burden the union might bear in implementing [*Beck* objections]." *Id.*

Accordingly, I reiterate my view, set forth in *Polymark Corp. and Steelworkers Local 4800 (George E. Failing Co.)*, that the requirement that *Beck* objections be filed during a window period such as at issue in this proceeding, "fall[s] within a generous range of reasonableness"² afforded unions under the duty of fair representation. I would dismiss the complaint allegation that the Respondents violated the Act by maintaining and applying to newly resigned employees a 1-month window period for the invocation of their *Beck* rights.

On a separate issue, I agree with my colleagues that, once an employee has timely filed a *Beck* objection, a

¹ 487 U.S. 735 (1988).

² *Nielsen v. Machinists*, supra at 1117.

union may not continue to charge the employee for non-representational activities undertaken by the union.³ Accordingly, I agree with the majority that the Respondents violated their duty of fair representation by maintaining and applying that portion of their *Beck* procedure which provides that dues reductions will not become effective, for unit members who file *Beck* objections during the 1-month October window period, until the following January 1.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT prevent employees in the American National Can Company bargaining unit who have resigned from the Union from filing objections to the payment of fees for expenditures of the Union not germane to the collective-bargaining process within a reasonable period after their resignations.

³ See, e.g., *Teamsters Local 435 (Mercury Warehouse)*, 327 NLRB 458 (1999).

WE WILL NOT collect or attempt to collect fees from objecting nonmembers which are attributable to nonrepresentational expenses.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL amend our *Beck* policy to make it clear that: (i) bargaining unit members who have resigned from the Union may file objections to the collection of fees for nonrepresentational expenses at any time, or, at the option of the Union, for a reasonable period specifically designated in the *Beck* procedure and not to be less than 30 days, after the resignation is submitted; and (ii) dues reductions will become effective upon receipt of *Beck* objections from unit employees.

WE WILL recognize as objecting nonmembers as of the effective date of their resignations, the unit employees who resigned their union membership and filed *Beck* objections in July 1996, and accept from those employees reduced dues and fees for the period since they registered their *Beck* objections.

WE WILL refund, with interest, fees collected for non-representational expenditures from employees for the periods they should have been perfected objectors.

ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS, DISTRICT LODGE NO.
160 AND LOCAL LODGE NO. 79